

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: APRIL 16, 2003 Division: TDC

Bulk Item: Yes X No      Department:                     

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**AGENDA ITEM WORDING:**

Approval of an Amendment to Agreement with Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "Florida Keys.com and Key West.com to exercise option to extend Agreement until September 30, 2005.

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**ITEM BACKGROUND:**

TDC approved same at their meeting of March 18, 2003.

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**PREVIOUS REVELANT BOCC ACTION:**

BOCC approved original Agreement at their meeting of September 21, 2000.

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**CONTRACT/AGREEMENT CHANGES:**

Amendment to extend.

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**STAFF RECOMMENDATIONS:**

Approval

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**TOTAL COST:** \$20,000

**BUDGETED:** Yes X No     

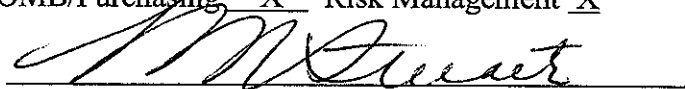
**COST TO COUNTY:** \$20,000

**SOURCE OF FUNDS:** TDC

**REVENUE PRODUCING:** Yes X No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DIVISION DIRECTOR APPROVAL:**

  
(Lynda Stuart)

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**                                     

**AGENDA ITEM #** DL

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**

**CONTRACT SUMMARY**

Contract with: Florida Keys.com and Contract # \_\_\_\_\_  
Key West.com Effective Date: 10/1/03  
Expiration Date: 9/30/05

Contract Purpose/Description:

Approval of an Amendment to Agreement with Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "Florida Keys.com and Key West.com to exercise option to extend Agreement until September 30, 2005.

Contract Manager: Maxine Pacini 3523 TDC # 3  
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on 4/16/03 Agenda Deadline: 4/2/03

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 20,000 Current Year Portion: \$ \_\_\_\_\_  
Budgeted? Yes ☒ No ☐ Account Codes: 115-75035-530340-T35M-230-X-530340  
Grant: \$ \_\_\_\_\_  
County Match: \$ \_\_\_\_\_

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$ \_\_\_\_\_/yr For: \_\_\_\_\_  
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>3/14/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/14/03</u>
Risk Management	<u>3/14</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>W. [Signature]</u>	<u>3/14/03</u>
O.M.B./Purchasing	<u>3/14/03</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>3/17/03</u>
County Attorney	<u>3/6/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S.Hutton</u>	<u>3/6/03</u>

Comments: O.M.B. needs Public Entity Crime  
Statement.  
Attached to bundle of approval

## ADDENDUM TO AGREEMENT

THIS ADDENDUM is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the Board of County Commissioners, Monroe County, Florida, hereinafter referred to as the County, and and Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "Florida Keys.com and Key West.com," hereinafter referred to as FIRM;

### WITNESSETH

WHEREAS, there was an agreement entered into on September 21, 2000, between the parties to provide website services to the Monroe County Tourist Development Council; and

WHEREAS, the original agreement allows for an extension for two (2) additional years beyond the initial award period;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to hereby amend the agreement entered into on September 21, 2000 as follows:

1. Paragraph 1. TERM, shall be amended as follows: The term of this Agreement is for a period of two (2) years beginning October 1, 2003 and expiring on September 30, 2005.

2. The remaining provisions of the agreement dated September 21, 2000 shall remain in full force and effect.

Attest: DANNY L. KOLHAGE, Clerk

Board of County Commissioners of  
Monroe County

BY: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

(CORPORATE SEAL)

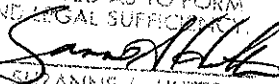
Attest:

Cooke Communications L.L.C., a  
Delaware Limited Liability Company  
Doing Business as  
FloridaKeys.com/KeyWest.com

By: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
President

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY   
SUZANNE A. HUTTON  
DATE 3/06/05

## WEBSITE FIRM AGREEMENT

THIS AGREEMENT is entered into this 21<sup>st</sup> day of Sept, 2000 by and between the BOARD OF COUNTY COMMISSIONERS, Monroe County, Florida, hereinafter referred to as the COUNTY and Cooke Communications L.L.C., a Delaware Limited Liability company doing business as "Florida Keys.com and Key West.com" hereinafter referred to as FIRM;

### WITNESSETH

WHEREAS, FIRM is qualified to provide website services which promote tourism, and

WHEREAS, the Tourist Development Council (TDC) has recommended to COUNTY that FIRM be awarded a contract for website services, and

WHEREAS, the TDC wishes to enter into this Agreement for website FIRM services with the FIRM,

1. TERM: The term of this Agreement is for a period of three (3) years beginning October 1, 2000 and expiring on September 30, 2003. The COUNTY has an option to extend this contract for an additional (2) year period beyond the initial award period, upon 60 days prior written notice of agreement extension to the FIRM.

2. The FIRM will serve as the full-service website provider agency for the Monroe County Tourist Development Council and Monroe County. The FIRM and the website provider programs are subject to review by the Monroe County Tourist Development Council.

3. SCOPE OF SERVICES:

- A. Key Personnel: This agreement is a "professional services contract" with the expectation that principal personnel will be performing the services. A list of the principal personnel will be given to the TDC for their record and the TDC shall be informed of any changes in personnel.
- B. At least one account manager(s) shall meet with the Monroe County Tourist Development Council (TDC) at all regularly scheduled meetings of the TDC and at any other times as directed by the TDC.
- C. The FIRM agrees to assign a Website Account Manager who will devote such time and effort as necessary to the account on a priority basis, including full time and emergency situations when required. Duties of the Account Manager or FIRM's assigned representative will include contact as required with the Chairman or Vice-Chairman of the TDC and Marketing Director or other designee. Other duties include regular visits throughout Monroe County; consultations with TDC Advisory Committees from the five districts and/or Chambers of Commerce within the Keys as directed by the TDC; participation in, and coordination of other related areas of tourism development as it relates to the development of an effective website

marketing program to the TDC as designated in Section D. within the Scope of Services.

D. The FIRM agrees to the following services:

1. The FIRM shall design, program and maintain host site (the WorldWideWeb) for the COUNTY on behalf of the TDC who retains all approvals.
2. The site shall be comprehensive including a home page, TDC district content, special umbrella sections, places to stay, things to do and see, a calendar of events updated when content is made available by TDC, transportation, news releases, catastrophic situation changes and release and other site categories as deemed appropriate for marketing purposes by the TDC.
3. The FIRM must be available to meet with District Advisory Committees, umbrella organizations, agencies of record, TDC board and TDC staff at regular set meetings or upon request.
4. The FIRM shall understand and agree that the TDC will have editorial control and approval of the site and all contents. All editorial content will be reviewed and approved by the TDC or its assigned representative.
5. Artwork, editorial and photographic material – to be commonly known as 'data' collected or prepared by the TDC and/or its contracted agencies will be released to FIRM at no charge for use solely in the official WWW site unless protected by copyrights, exclusive-use agreement, approved in advance by TDC or TDC director.
6. The FIRM shall understand that the TDC along with their agencies of record have the right to provide input into the design and creativity of the site. This shall be done upon approval of the TDC or TDC director.
7. The FIRM shall furnish real time images on the TDC website at different locations or events in Monroe County as mutually agreed by all parties.
8. The FIRM shall furnish the setup and the capability to download any of the TDC brochures as on-line electronic brochures. These should be in portable document format (PDF) and the FIRM shall provide a monthly report on the number of downloads.
9. The FIRM shall furnish a list server service to capture e-mail addresses for Monroe County TDC promotions.
10. The FIRM agrees to furnish safe guards and backups to protect electronic data and programming from both natural and manmade disasters.

11. The FIRM shall, on a quarterly basis, review sites, links, data, efficiencies and results and provide an assessment of services. The FIRM shall monitor other like destinations for purposes of comparative evaluation.
12. The FIRM shall submit the site to all major search engines on a regular basis determined by each of the various search engines submission policies.
13. The FIRM shall furnish monthly reports to the TDC which will track the number of user sessions, most requested pages, top referring URLs, top search engines, top search keywords or phrase, and other requested TDC research reports.
14. The FIRM shall have the right to create Internet ads for our tourism industry partners.
15. The FIRM must host the site with state of the art equipment connected to high tier of the Internet backbone. The FIRM should host the site on redundant drives or redundant services.
16. The FIRM shall guarantee service uptime at over 99% except as excused by the conditions of the Force Majeure paragraph of this agreement.
17. The TDC shall have the sole, and exclusive right to the authorization of sales, merchandising, reservation system or any mode of revenue producing program, which authorization shall be established through guidelines approved by the TDC.
18. The FIRM shall implement a pass word protected communications area to be utilized by the FIRM, TDC director and TDC agencies of record to facilitate a log to record transmissions related to the operations of the website.
19. TDC shall only promote the official TDC website address.

4. COMPENSATION: a. The FIRM shall provide all services and support as listed in the Scope of Services at no charges to COUNTY or TDC in exchange for the exclusive right of advertising revenues generated from the website. The TDC shall have the right to place sponsorship or partnership logo signature on the site. The logo signature(s) in a mutually agreed upon format and location will be at no cost to the TDC.

The FIRM may charge the COUNTY for special projects approved by the TDC or Director outside the scope of services such as new site enhancements which require the FIRM to pay for the technology, equipment and production

costs needed for use. These special projects shall be paid for through normal COUNTY purchase order procedures.

b. Electronic Brochure Service – Firm will be paid on an annual basis, a fee of \$15,000 for the service providing electronic brochures from the website. If the downloads should exceed one million brochures in any one year, the fixed annual fee may to be adjusted to compensate for the added bandwidth usage. There shall be a setup fee of \$250.00 per brochure for the electronic brochure service. Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the BOCC.

5. RECORDS - ACCESS AND AUDITS: The FIRM shall maintain adequate and complete records to justify all charges, expenses and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The COUNTY shall have access to such books, records, and documents concerning the contracted services. The access to and inspection of such books, records, and documents by the TDC/COUNTY shall occur at any reasonable time. FIRM understands that it shall be responsible for repayment of any and all audit exceptions identified by TDC/COUNTY. Any current or subsequent contract awards will be offset by the amount of any audit exceptions. In the event there are not funds still held by TDC/COUNTY for a contract award, the amount of audit exception shall be billed to FIRM who shall promptly pay same.

6. GENERAL PROVISIONS:

A. Website FIRM Agency of Record: The FIRM shall act as the exclusive agency of record of the COUNTY/TDC for the preparation and placing of all of the latter's website, except as mutually agreed otherwise, and for the performance of related or special services as requested by the TDC.

B. FIRM shall indemnify and hold COUNTY harmless from any suits, claims, damages, costs, or expenses arising out of the fulfillment of this agreement. Liability with regard to false, defamatory, or otherwise objectionable website advertising material, including material which invades the privacy of individuals shall be that of the FIRM and such liability shall extend to, website advertising material which has been approved by TDC. The FIRM agrees to pay all claims and losses and shall defend all suits filed due to the negligent acts, errors or omissions of its employees and/or agents, including related court costs.

C. Property Rights: The COUNTY shall own and have all rights subject to design and content of the site including copyrights, art work and other website production which the FIRM prepared or purchased at COUNTY expense pursuant to this agreement. All rights involving advertising shall be retained by the FIRM. The TDC will compensate the FIRM at a reasonable fee regarding the transfer of data owned by the COUNTY.

7. APPROVAL AND CHANGES: The TDC shall have the sole and exclusive right to approve, modify, reject, or cancel any and all plans, proposals, submissions and other work in progress, in which case the TDC's directions shall

be immediately implemented. However, nothing in this Agreement shall be construed as requiring the FIRM to violate any contractual commitments to media or sales made on the TDC's behalf. All contractual commitments other than advertising on the website require prior review and approval by the TDC. (See Paragraph 4) The COUNTY shall only be liable for charges approved in writing prior to the FIRM entering into such contractual commitment.

8. TERMINATION: Either party shall have the right to cancel this Agreement at its sole discretion upon 120 days written notice to the other party. FIRM shall deliver to the COUNTY all materials related to the work performed under this contract upon termination thereof. (See Paragraph 6©)

9. EXCLUSIVE REPRESENTATION: The division of Cooke Communications L.L.C., known as FLORIDAKEYS.COM/KEY WEST.COM (referred to herein as the FIRM) agrees that it will not represent any other destination other than Monroe County without approval from the TDC and COUNTY.

FIRM shall act at all times herein as independent contractor, and nothing contained herein shall be construed to create the relation of principal agent or employer and employee, between COUNTY and FIRM.

10. DISCLOSURE OF FINANCIAL INTEREST: The FIRM agrees to disclose within thirty (30) days of the execution of this Agreement any existing financial interest in the business of its suppliers or firms utilized in fulfillment of this Agreement, and shall disclose said interests as they may arise from time to time.

11. LAWS AND REGULATIONS: It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

12. TAXES: The COUNTY and TDC are exempt from Federal Excise and State of Florida Sales Tax.

13. FINANCE CHARGES: The COUNTY and TDC will not be responsible for any finance charges.

14. RELATION OF COUNTY/TDC: It is the intent of the parties hereto that FIRM shall be legally considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the COUNTY and TDC and the COUNTY and TDC shall at no time be legally responsible for any negligence on the part of FIRM, its employees or agents, resulting in either bodily, personal injury or property damage.

15. DISCLOSURE: The FIRM shall be required to list any or all potential conflicts or interest, as defined by Florida Statute 112 and Monroe County Code and shall disclose to the COUNTY and TDC all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the COUNTY and TDC.

16. FORCE MAJEURE: FIRM shall not be liable for delay in performance or failure to perform, in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its



subcontractors or suppliers, including labor dispute, strike, labor shortage, war or act of war, whether an actual declaration thereof if made or not insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where FIRM has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of this Agreement.

17. ASSIGNMENT: The FIRM shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or of any or all of its rights, title or interest therein, or its power to execute such contract to any person, company or corporation without prior written consent of the COUNTY.

18. COMPLIANCE WITH LAWS-NONDISCRIMINATION: The FIRM shall comply with all international, federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age, or national origin in the performance of work under this Agreement. This Agreement shall be subject to all international, federal, state, and local laws and ordinances.

19. INSURANCE: The FIRM shall maintain the following required insurance throughout the entire term of this contract and any extensions. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the FIRM to maintain the required insurance shall not extend any deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for FIRM's failure to maintain the required insurance.

The FIRM shall provide, to the COUNTY, as satisfactory evidence of the required insurance, either:

- \* Certificate of Insurance
- or
- \* A Certified copy of the actual insurance policy

The COUNTY, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All Insurance policies must specify that they have a thirty (30) day notice of cancellation, non-renewal, material change in policy language or reduction in coverage.

The acceptance and/or approval of the FIRM's insurance shall not be construed as relieving the FIRM from any liability or obligation assumed under this agreement or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials shall be included as an "Additional Insured" on all insurance policies, (except for Workers' Compensation.) as their interests may appear in all policies issued to satisfy these requirements.

Any deviations from these General Insurance Requirements must be requested in writing on the COUNTY prepared form entitled "Request for Waiver of Insurance Requirements". Any deviation must be approved in writing by Monroe County Risk Management.

A. Prior to the commencement of work governed by this agreement the FIRM shall obtain Workers' Compensation Insurance with limits sufficient to comply with Florida Statute 440.

In addition, the FIRM shall obtain Employers' Liability Insurance with limits of not less than:

\$100,000 Bodily Injury by Accident  
\$500,000 Bodily Injury by Disease  
\$100,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of this agreement.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-V1, as assigned by the A.M. Best Company.

B. Prior to the commencement of work governed by this agreement the FIRM shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the agreement and include, as a minimum:

- \* Premises Operations
- \* Products and Completed Operations
- \* Blanket Contractual Liability
- \* Personal Injury Liability
- \* Expanded Definition of Property Damage

The minimum limits acceptable shall be:

\$1,000,000 per occurrence, and \$1,000,000 aggregate

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000 per person  
\$1,000,000 per Occurrence  
\$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this agreement. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the COUNTY.

The Monroe County Board of County Commissioners shall be named as Additional Insured as their interests may appear (see attached document for full text) on all insurance policies issued to satisfy the above requirements.

20. GOVERNING LAW/VENUE: This Agreement shall be governed and construed by and in accordance with the laws of the State of Florida and constitutes the entire agreement between the COUNTY and FIRM. Venue for any dispute shall be in Key West, Monroe County.

21. ENTIRE AGREEMENT AMENDMENT: This writing embodies the entire Agreement and understanding between the parties hereto, and there are not other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. Any amendment to this Agreement shall be in writing recommended by the TDC and approved by the COUNTY and signed by both parties.

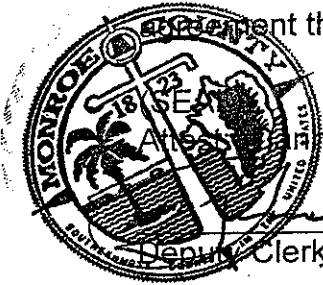
22. SEVERABILITY: If any provisions of this Agreement shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. AUTHORITY: Each of the signatories for the FIRM below certifies and warrants that:

a) The FIRM's name in the agreement is the full name as designated in its corporate charter, and b) they are empowered to act and contract for the contractor and c) this agreement has been approved by the FIRM's Board of Directors.

24. ETHICS CLAUSE: FIRM warrants that he/it has not employed retained or otherwise had act on his/its behalf any former COUNTY office or employee in violation of Section 2 or Ordinance No. 10-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the COUNTY may, at its discretion terminate this contract without liability and may also, at its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present COUNTY officer or employee.

IN WITNESS WHEREOF, the parties hereto have executed this  
document the day and year first above written



Anthony L. Kolhage, Clerk

(CORPORATE SEAL)

Attest:

Deputy Clerk

Board of County Commissioners  
of Monroe County

*Shirley Freeman*  
Mayor/Chairman

**Cooke Communications L.L.C., a  
Delaware Limited Liability Company  
Doing Business as  
FloridaKeys.com/KeyWest.com**

By:

*William Barry* 9/18/00

~~Managing Director~~

William Barry

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY

*Suzanne A. Hutton*  
SUZANNE A. HUTTON

DATE

8/31/00

## **PUBLIC ENTITY CRIME STATEMENT**

"A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

Cooke Communications L.L.C., a  
Delaware Limited Liability Company  
Doing Business as  
[FloridaKeys.com/KeyWest.com](http://FloridaKeys.com/KeyWest.com)

By:   
President